

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

VICKIE J. PEGEL

Claimant

VS.

IBP, INC.

Respondent

Self-Insured

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Docket No. 248,699

ORDER

Respondent requested Appeals Board review of Administrative Law Judge Brad E. Avery's August 24, 2000, preliminary hearing Order for Compensation.

ISSUES

The Administrative Law Judge found claimant suffered an accidental injury that arose out of and in the course of her employment with the respondent. The Administrative Law Judge ordered respondent to pay past medical treatment expenses, provide claimant with temporary total disability benefits, and provide claimant with further medical treatment.

Respondent appealed and contends claimant failed to prove she suffered an accidental injury that arose of and in the course of her employment with the respondent. Further, respondent questions claimant's entitlement to temporary total disability benefits.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the parties' briefs, the Appeals Board finds the preliminary hearing Order for Compensation should be affirmed.

On October 8, 1999, claimant was sitting on a metal stool performing her job of picking meat on the trim belt. Claimant thought she heard someone call her name. As she stood up to see who was calling her, she turned slightly to the left and immediately felt a pop followed by pain in her left knee.

Because the pain did not subside, claimant went to the company nurse and reported the accident. The nurse placed ice on claimant's left knee and then sent claimant home. Claimant needed the assistance of a cane to assist her in walking from the nurse's office.

Claimant first sought medical treatment for her left knee with her private physician, James M. Geitz, M.D., of Emporia, Kansas. Dr. Geitz saw claimant on October 12, 1999, and prescribed anti-inflammatory medication, crutches, and heat therapy for claimant's left-knee injury. He also took claimant off work until October 19, 1999.

On the day claimant was to return to work, October 19, 1999, respondent referred claimant to see the company physician, J. Rob Hutchison, M.D., of Emporia, Kansas. Dr. Hutchison had claimant undergo an MRI examination on November 30, 1999. That examination showed an injury to the anterior horn of the lateral meniscus, degenerative change in the posterior horn of the medial meniscus, and some knee joint effusion.

The respondent eventually referred claimant to orthopedic surgeon Brett E. Wallace, M.D., of Topeka, Kansas. Dr. Wallace first saw claimant on January 28, 2000. After he examined claimant, he placed her on alternate duty of sitting and standing. He also restricted claimant to no squatting, crawling, or kneeling. Claimant was continued on anti-inflammatory medication. The doctor also discussed with the claimant the possibility of more aggressive treatment of arthroscopy surgery.

Claimant did not return to see Dr. Wallace until May 17, 2000. At that time, claimant still had some discomfort in her left knee, but her left knee had improved. Because of this improvement, arthroscopy surgery was ruled out at that time. Dr. Wallace returned claimant to her normal duties.

On the date of the preliminary hearing, August 18, 2000, claimant's left knee remained symptomatic and continued to pop and catch. But claimant had not received any further medical treatment because the respondent, by a letter dated May 17, 2000, notified claimant and Dr. Wallace that her claim for medical treatment was denied as not work-related.

Respondent contends claimant's act of standing up from a sitting position on a stool is an activity of day-to-day living, and claimant's injury is not compensable for that reason. Respondent cites the provision contained in K.S.A. 1999 Supp. 44-508(e) that states:

An injury shall not be deemed to have been directly caused by the employment where it is shown that the employee suffers disability as a result of the natural aging process or by the normal activities of day-to-day living.

The Appeals Board does not construe the provision of K.S.A. 1999 Supp. 44-508(e) as respondent urges. Claimant's accident was a sudden traumatic event that occurred while she was performing her job of picking meat from the trim belt. In this context, the act of

standing up from a sitting position and twisting her knee is not an a “activity of day-to-day living.” The reference to injury caused by activities of day-to-day living should be construed as a reference to an injury that occurs from the gradual wear of day-to-day activities no more at work than away from work as found in Boeckmann v. Goodyear Tire & Rubber Co., 210 Kan. 733, 504 P.2d 625 (1972).

Respondent also argues the medical evidence contained in the preliminary hearing record of this case is almost identical to the medical evidence in the Boeckmann case. The Appeals Board agrees the medical evidence in this case indicates that the claimant has degenerative changes in her left knee. But the Appeals Board does not agree the medical evidence rises to the level of the Boeckmann case, where the claimant had a crippling arthritic condition that was aggravated by any movement and there was no difference between stoops and bends that occurred on the job or off. 210 Kan. at 739.

Respondent also raised the issue of whether claimant was entitled to temporary total disability benefits. This is not an issue the Appeals Board has jurisdiction to consider on an appeal from an preliminary hearing order.¹

WHEREFORE, it is the finding, decision, and order of the Appeals Board that Administrative Law Judge Brad E. Avery’s August 24, 2000, preliminary hearing Order for Compensation should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of October 2000.

BOARD MEMBER

c: Stanley R. Ausemus, Emporia, KS
Bradley D. Thornton, Dakota City, NE
Brad E. Avery, Administrative Law Judge
Philip S. Harness, Director

¹See K.S.A. 1999 Supp. 44-534a(a)(2).